There Is Excepted from the above described tract all that portion of the West 762.5 feet of Section 15, Township 11 North of Range 6 West which might be included in the above description, and all of that portion of Section 22 and the West 947.76 feet of Section 23, Township 11 North, Range 6 West lying North of the South line of the Cebolleta Grant.

Also

All of Tract 6 of the Cebolleta Land Grant in Valencia County and Sandoval County, New Mexico, decreed in severalty to L. Bradford Prince, Roman L. Baca and Charles Seymour, in proportions mentioned therein, by Decree in Cause 6113 on the Docket of the District Court in and for Bernalillo County, New Mexico, on January 21st, 1905, which said tract is described as follows:

Beginning at a point 2 chains and 26 links South of the Eight mile corner on the East boundary line of the Cebolleta Grant and running

thence West 213 chains 23 links to an angle point;
thence North 148 chains 70 links to an angle point;
thence West 245 chains 70 links to an angle point;
thence South 509 chains 73 links to an angle point;
thence East 458 chains 93 links to the East boundary line of said Grant, at a point South 6° 45′ West 42 chains and 80 links from the four mile corner on the said East line of said Grant;
thence North 6 degrees 45 minutes East 42 chains and 80 links to said 4 mile corner;
thence North 317 chains 74 links to the place of beginning, containing 20,201 acres.

All that portion of Tract 8 of the Cebolleta Land Grant in Valencia County, New Mexico, set off to Juan Anaya et al. (being unrepresented owners) by decree in Cause 6113 on the docket of the District Court in and for Bernalillo County, New Mexico, on January 21, 1905, which was sub-

sequently, by Decree in Cause 1620 on the docket of the District Court in and for Valencia County, New Mexico, entered February 10, 1909, set apart and segregated to Willi Spiegelberg, and which said portion is described as follows:

Beginning at the Northwest Corner of said tract 8 and running

thence East 9141 feet to the Northeast Corner,
thence South 8230 feet to a corner,
thence East 1800 feet to a corner,
thence South 3404 feet to the Southeast Corner,
thence West 10,941 feet to the Southwest Corner, a point on the Western boundary of said tract 8,
thence North along said Western boundary 11,634 feet to the place of beginning, containing 2582 acres.

All that certain tract of land in Valencia and Sandoval Counties, New Mexico, which is part of the Cebolleta Land Grant, to-wit:

Beginning at a point on the East boundary of said Grant, 11 chains and 94 links North of the 10 Mile corner on the East line of said Grant;

thence West 213 chains 23 links to an angle point;
thence South 174 chains and 20 links to an angle point;
thence East 213 chains and 23 links to a point on the east Boundary of said Grant which is 2 chains and 26 links south of the 8 mile corner;
thence North 174 chains and 20 links to the place of beginning;

Being Tract No. 4 as described and set forth in the report of the Commissioners and in the Decree of the District Court of Bernalillo County, N. M., in that certain Cause #6113 on the docket of said Court wherein Roman L. Baca et al. were plaintiffs and Santiago Anaya et al. were defendants, containing 3,714 acres.

A tract of land in Sandoval County, New Mexico, which is part of the Cebolleta Land Grant and which is described as follows, to-wit:

Beginning at the Northeast Corner of said Grant, and running

thence North 84° 45′ West 256.26 chains to a point on the North line of said Grant which is North 84° 45′ West 16.26 chains from the 3 mile corner on the North line of said Grant;
thence South 487 chains;
thence East 42 chains;
thence South 134.50 chains;
thence East 213.23 chains to a point on the East line of said Grant which is north 11.94 chains from the 10 mile corner on the east line of said Grant;
thence North 598.08 chains to the place of beginning,

being Tract No. 3 as described and set forth in the report of Commissioners and in the Decree of the District Court of Bernalillo County, New Mexico, in that certain Cause No. 6113 on the docket of said Court wherein Roman L. Baca et al. were plaintiffs and Santiago Anaya et al. were defendants, and containing 15,000 acres.

This Tract contains an area of 8012.05 acres which is in conflict with the Capitan Antonio Baca Grant or Nuestra Senora de la Luz de las Lagunitas Grant, as hereinbefore noted.

Also a Tract of land in Sandoval County, New Mexico, within the exterior boundaries of the Cebolleta Land Grant, which is described as follows:

The Northerly 6723 acres of all that part of tract 5 of said Grant which lies in Sandoval County, New Mexico; the said tract 5 being described and set forth in the report of the Commissioners and in the decree of the District Court of Bernalillo County, N. M., in that certain Cause No. 6113 on the docket of said Court wherein Roman L. Baca et al. were plaintiffs and Santiago Anaya et al. were defendants,

said 6723 acres being more particularly described as follows:

Beginning at the Northeast corner, which is the Northeast corner of said Tract No. 5 a point on the North boundary of the Cebolleta Grant sixteen chains and twenty-six links North eighty-four degrees, forty-five minutes West from the Three Mile corner on said Grant boundary, running

thence North eighty-four degrees forty-five minutes West along said Grant boundary one hundred ninety-eight chains and eighty-four links to the Northwest corner at the point of intersection of said Grant boundary with the West line of Sandoval County;

thence South along the West line of Sandoval County three hundred eighty-seven chains and nine links to the Southwest corner;

thence East one hundred ninety-eight chains to the Southeast corner;

thence North three hundred sixty-eight chains and ninety-seven links to the place of beginning, and containing 6723 acres, more or less.

(Sgd.) GEORGE S. KLOCK,
Attorney for the Board of Trustees
of the Town of Cebolleta Land Grant.

APPENDIX "A".

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO.

JANUARY TERM, 1941.

No. 4639.

L BAR CATTLE COMPANY, INC., a Corporation,
Plaintiff and Appellee,

vs.

BOARD OF TRUSTEES OF THE TOWN OF CEBOLLETA LAND GRANT, et al., *Defendants and Appellants.*

Appeal from the District Court of Sandoval County, Johnson, Judge.

Supreme Court of New Mexico. Filed Nov. 18, 1941. Herbert Gerhart, Clerk.

Botts & Botts, Albuquerque, New Mexico, Attorneys for Appellee.

George S. Klock, Esq., Albuquerque, New Mexico, Attorney for Appellants.

11-28-41, Motion for rehearing.
1-3-42, Motion denied.

OPINION.

BICKLEY, *J.:*

Plaintiff commenced suit in statutory form for quieting the title to about eighty-five thousand (85,000) acres of land, the greater portion of which lies within the exterior boundaries of what is commonly known as the Cebolleta Land Grant.

All defendants, except the appellant, defaulted. It is assumed that defendant's answer constitutes a general denial.

On the trial, Appellee in support of its title, introduced seven abstracts of title which appellee claims traced its record title to the land involved from the time of the Gov-

ernment Patent down to the appellee. Appellee also relied on title by adverse possession and the court in a paper entitled "The Court's Opinion, Findings of Fact and Conclusions of Law" made a specific finding and conclusion that all the elements were in evidence to support appellee's title by adverse possession. We have read the record and conclude that this finding is supported by substantial evidence. Indeed, this finding seems not to be challenged by appellants except insofar as they argue that the title to the lands involved may not be lost by the grantees named in the patent from the United States, viz., the inhabitants of the Town of Cebolleta, their successors and assigns, and that a title by adverse possession may not be acquired to such lands.

About a month later, the court entered its judgment and decree in which it found generally that the plaintiff is the owner in fee simple and in possession of the land involved in this suit, and quieted plaintiff's title thereto.

In perfecting its appeal, appellant filed a praecipe, calling for the complete record and proceedings, including the abstracts of title introduced by appellee as its Exhibits A to G, inclusive.

When it came time for settling the bill of exceptions appellant presented to the court for settlement the stenographer's transcript of testimony without the inclusion of any exhibits or any statements of their existence or substance with so much of their contents as would be necessary to a proper presentation of the point at issue. Thereupon appellee objected to the settling or signing of the court stenographer's transcript thus presented, on the ground, among others, that such transcript did not comply with or conform to Sections 2 and 3 of Rule XIII and Sections 7 and 8 of Rule XIV of the Supreme Court. Thereupon the court made its certificate settling the bill of exceptions and, after setting out appellee's objections, concluded the certificate of settlement thus:

> "And thereupon the Court ruled, and called to the attention of the Appellant, that the transcript tendered is defective and incomplete in the particulars pointed out in Appellee's objections; whereupon Appellant advises and assures the Court that plaintiff's Exhibits

A to G, both inclusive, being the abstracts of title to the land, title to which is quieted in the Appellee by the Court's decree herein, are not material or relevant to the decision of any question which Appellant will raise or argue in the Supreme Court on appeal, and for that reason elects to have said Exhibits omitted from the record on appeal; and now, based on the advice, assurance and election of the Appellant aforesaid, and over the objection of Appellee, on this 13th day of May, 1941, to which time the consideration of appellant's application has been duly continued, the Judge of this Court has signed and settled the foregoing as Appellant's bill of exceptions."

Thus it appears that the evidence—the abstracts of title—introduced as proof of plaintiff's title is not before us.

We have said many times that, upon a doubtful or deficient record, every presumption is indulged in favor of the correctness of the judgment of the trial court and the burden is on the appellant to overcome these presumptions. See Ball et al. *v.* U. S. Copper Co., et al., 35 N. M. 637, 6 P. (2d) 192; Mansfield *v.* Reserve Oil Co., 38 N. M. 187, 29 P. (2d) 491; Hobbs *v.* Town of Hot Springs, 44 N. M. —, 106 P. (2d) 856.

Even if we should regard the general finding and conclusion of the trial court contained in the decree that the plaintiff is the owner in fee simple and in possession of the lands involved, to be restricted by the finding made a month earlier that the plaintiff had proved its title by adverse possession, we should presume that the abstracts introduced in evidence and absent from the record would show the element of color of title in the plaintiff. Appellants have assigned many errors, principally on account of the trial court's refusal to make certain findings of fact and conclusions of law requested by them. Some of these may have been refused because not warranted by the evidence, others because immaterial, others because argumentative merely.

In view of the state of the record and the points presented by appellants upon which they base their argument for reversal of the judgment, we are unable to say that the court committed prejudicial error in such refusals.

As we understand appellant's contention, it is that lands described in a grant from the United States to named grantees being "the Inhabitants of the Town of Cevolleta, their successors and assigns", evidenced by a Patent which contains the recital:

> "*TO HAVE AND TO HOLD* the said tract of land with appurtenances unto the said *Inhabitants of the Town of Cevolleta* their successors and assigns forever, with the stipulations aforesaid."

can never be divested by either voluntary or involuntary means, and that lands so granted are not subject to prescription.

We are not unaware that the United States has in some instances placed qualified restrictions on the alienation of lands patented to certain Indians, and perhaps others, to protect them from an improvident disposition of the lands.

But we see nothing in the language of the patent here involved to indicate any intention that there should be any restraint upon alienation.

In H. N. D. Land Co. *v.* Suazo, 44 N. M. 547, 105 P. (2d) 744, we held:

> "Title to common and unalloted lands of a community grant could be acquired by adverse possession."

See also Christmas *v.* Cowden, 44 N. M. 517, 105 P. (2d) 484.

Finding no error the judgment and decree should be affirmed, and

It Is So Ordered.

(Sgd.) HOWARD L. BICKLEY,
Justice.

We Concur:

(Sgd.) CHARLES R. BRICE,
Chief Justice.

(Sgd.) A. L. ZINN,
Justice.

(Sgd.) DANIEL K. SADLER,
Justice.

MABRY, *J.*, did not participate.